

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Sharon D. Evans, Senior Program Analyst
(TPP)

from: Pamela W. Fuller
Branch Chief , Branch 3
(Procedure & Administration)

subject: Whether consideration of I.R.C. § 6532 alone is sufficient to determine whether the Office of Appeals can allow a claim for refund after the 2-year period for filing suit has expired.

This Chief Counsel Advice responds to your request for assistance dated August 17, 2010. This advice may not be used or cited as precedent.

ISSUES

Whether consideration of I.R.C. § 6532 alone is sufficient to determine whether the Office of Appeals can allow a claim for refund after the 2-year period for filing suit has expired.

CONCLUSIONS

No. Consideration must be given to I.R.C. § 6514 in addition to I.R.C. § 6532 in determining that the Office of Appeals cannot allow a claim for refund after the 2-year period for filing suit has expired.

LAW AND ANALYSIS

Internal Revenue Code § 7422 requires the filing of a claim for refund or credit according to the provisions of law and the regulations of the Secretary, before a suit or proceeding shall be maintained in any court for such refund or credit. Section 6511(a) provides that a “[c]laim for credit or refund of an overpayment . . . shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the

tax was paid, whichever of such periods expires later.” Internal Revenue Code § 6511(b) limits the Service, providing that “[n]o credit or refund shall be allowed or made after the expiration of the period of limitations prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.” This bar on the Secretary is reinforced in Treas. Regs. §§ 301.6511(b)-1(a) and 301.6402-2(a)(1).

Where the taxpayer timely files a claim for credit or refund, the taxpayer receives 2 years to bring a lawsuit for the credit or refund, measured from the date the Secretary mails to the taxpayer notice of the disallowance of the part of the claim to which the suit or proceeding relates. I.R.C. § 6532(a)(1). Any consideration, reconsideration or action by the Secretary after the mailing of such notice shall not operate to extend the two-year period for filing suit. I.R.C. § 6532(a)(4).

If consideration is only given to I.R.C. § 6532, it would appear that nothing prevents the Service from allowing a claim and issuing a refund after the expiration of the two-year period. However, where the taxpayer timely files a claim, but does not timely file suit, I.R.C. § 6514(a) declares any refund made as erroneous and any credit given as void. As such, section 6514(a) precludes any division of the Service, including Appeals, from allowing a refund after the expiration of the statute. Were Appeals to approve such a refund, the Service could file suit for recovery of the refund. I.R.C. § 6532(b). Therefore, once consideration is given to both I.R.C. §§ 6532 and 6514, it becomes clear that the Service may not approve a claim for refund after the time for the taxpayer to file a suit for refund expires.

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Please call us at (202) 622-3600 if you have any further questions.